BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT, SAN DIEGO COUNTY MENTAL HEALTH, and CALIFORNIA DEPARTMENT OF EDUCATION.	OAH CASE NO. 2010120140 ORDER GRANTING THE CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS

On December 4, 2010, Student filed a Due Process Hearing Request (complaint) against the San Diego Unified School District (SDUSD), San Diego County Mental Health (SDCMH), and the California Department of Education (CDE). On December 10, 2010, CDE filed a motion to dismiss it as a party to this action, alleging that it is not an educational agency responsible for providing special education and related services to Student. Student has not filed an opposition to CDE's motion.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility].) The jurisdiction of the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

DISCUSSION

In the complaint, Student alleges that CDE is an appropriate party because of its supervisorial oversight of special education programs as the Statewide Educational Agency (SEA) under the Individuals with Disabilities Education Act (IDEA), as the SEA has the responsibility for the general supervision and implementation of IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) The complaint appears to contend that CDE is an appropriate party due to SDCMH's refusal to participate in Student's IEP process and therefore refusal to provide him with services because of the Governor's October 8, 2010 veto of state funding to county mental health agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq.

The complaint raises no claims against CDE that it was involved in Student's IEP process or that it specifically has denied Student a FAPE. The gist of the allegations against it is that CDE has failed to take any action regarding SDCMH's statements that it will no longer fund Student's residential placement. The complaint then seeks declaratory relief in the event that there is a future lapse in services needed by Student. The complaint makes no claims that CDE is a public agency involved in the provision of special education services or decisions regarding Student. The United States District Court decisions cited by Student for the proposition that CDE is an appropriate party are not applicable. For example, in *Orange County Dept. of Educ. v. A.S.* (2008) 567 F.Supp.2d 1165, the issue was which educational agency was responsible for providing special education services to a parentless child when the Orange County Juvenile Court had not appointed a legal guardian or responsible adult. The court found that CDE had responsibility by default under IDEA for providing a free appropriate public education (FAPE) to the parentless child in absence of any California law designating local entity responsible for that education. (*Id.* at p. 1170.)

In this case, Student's complaint indicates that he lives with his parent within the boundaries of SDUSD, that Student previously had been found eligible for special education, and that he has been provided special education and related services under an individualized education plan developed first by his former school district and subsequently by SDUSD.

California law clearly designates the local educational agency as having responsibility for the provision of FAPE. CDE is not Student's LEA; SDUSD is.

Student contends in his complaint that where an LEA refuses or is unable to provide mental health services CDE becomes the responsible educational agency by default. This argument is not persuasive. Following it to its logical conclusion, any school district could merely state that it was unwilling to provide special education programming to an eligible student and thereby abdicate its responsibilities under both state and federal law. There is simply no basis under either the IDEA or the Education Code to support that proposition. California's statutory scheme creates school districts which are responsible for providing educational programming to students within their boundaries; CDE, for most purposes, only has supervisorial responsibility for that programming and is not directly responsible for providing the educational programming or services.

Additionally, IDEA defines and limits the hearing officer's jurisdiction in due process proceedings. The issue of CDE's oversight of local education agencies to ensure their compliance with relevant special education law and regulations is outside the scope of OAH's jurisdiction.

Accordingly, CDE is not a necessary or proper party to the complaint.

ORDER

CDE's motion to dismiss itself as a party is granted. The matter will proceed against the other remaining parties as presently scheduled.

IT IS SO ORDERED.

Dated: December 21, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings